

**ASSEMBLY BILL**

**No. 744**

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**Introduced by Assembly Member John A. Pérez**

February 17, 2011

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An act to add Chapter 2 (commencing with Section 13988) to Part 4.5 of Division 3 of Title 2 of the Government Code, relating to intellectual property.

LEGISLATIVE COUNSEL'S DIGEST

AB 744, as introduced, John A. Pérez. Office of Intellectual Property.

Existing law permits various state agencies to enter into contracts and agreements, create liabilities, and develop, own, and control the use of intellectual property developed by the state.

This bill would establish the Office of Intellectual Property in the Business, Transportation and Housing Agency. The agency would be responsible for tracking intellectual property generated by state employees and by state-funded research, developing a database to track intellectual property, developing an outreach campaign informing state agencies of their rights and abilities concerning intellectual property, developing a sample maintenance plan of an inventory of intellectual property, and developing sample invention assignment agreements and sample language for licenses or terms-of-use agreements for use by state agencies. The bill would define terms that apply to the function of the agency, and would make findings and declarations regarding intellectual property.

This bill would, notwithstanding any other law, provide that state agencies and departments may, upon request, share records and information related to intellectual property generated by state employees and state-funded research with the office. This bill would also impose

certain restrictions on employees and former employees of the office with respect to divulging certain information provided by state agencies and departments regarding intellectual property. This bill would provide that these provisions do not apply to intellectual property agreements administered by the Regents of the University of California, with exceptions, or to intellectual property agreements governed by the California Stem Cell Research and Cures Bond Act.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Chapter 2 (commencing with Section 13988) is added to Part 4.5 of Division 3 of Title 2 of the Government Code, to read:

CHAPTER 2. OFFICE OF INTELLECTUAL PROPERTY

13988. The Legislature finds and declares all of the following:

(a) The state is home to many of the world's top research universities, national laboratories, and leading-edge high-technology companies that generate significant intellectual property.

(b) It is in the interest of the state to ensure that the results of state-funded research are promptly developed and protected and to make the research available in the public domain, where appropriate.

(c) The commercialization of technology developed with the investment of taxpayer dollars in the form of contracts, grants, and agreements could generate public benefit, including, but not limited to, state revenues, favorable pricing, revenue sharing, reinvestment into research, development of new technologies, the commercialization of the product of state-funded research, and the jobs created from these types of research.

(d) It is in the interest of the state to facilitate, promote, and enhance technology transfer programs that will facilitate the transfer of technology into the marketplace for the public benefit.

(e) The Legislature supports the use of efficient models to develop and streamline infrastructures, policies, and processes for the management of intellectual property developed under state

1 funding in order to stimulate economic development in the state  
2 while, at the same time, minimizing costs of administering policies  
3 in this area.

4 (f) It is the intent of the Legislature that the rights of state  
5 agencies to track and manage intellectual property created with  
6 any state funds shall be interpreted so as to promote the benefit to  
7 the public.

8 (g) It is the intent of the Legislature that the Office of Intellectual  
9 Property have access to information about intellectual property  
10 created by state employees and by state-funded research, consistent  
11 with state and federal laws and regulations governing access to  
12 this information

13 13988.1. The Office of Intellectual Property is hereby  
14 established in the Business, Transportation and Housing Agency.

15 13988.2. Unless the context otherwise requires, the definitions  
16 in this section govern the construction of this chapter:

17 (a) “Agency” means the Business, Transportation and Housing  
18 Agency.

19 (b) “Databases” means compilations of data, typically generated  
20 from research, sometimes from one source, but often combined  
21 from many sources.

22 (c) “Intellectual property” means intangible assets that are  
23 subject to statutory protection under applicable patent, copyright,  
24 and trademark law. Intellectual property includes, but is not limited  
25 to, inventions, industrial designs, identifying marks and symbols,  
26 electronic publications, trade secrets, and literary, musical, artistic,  
27 photographic, and film works.

28 (d) “Office” means the Office of Intellectual Property.

29 13988.3. The Office of Intellectual Property shall perform all  
30 of the following functions:

31 (a) Track intellectual property generated by state employees  
32 and state-funded research.

33 (b) Develop a database that includes, but is not limited to,  
34 tracking intellectual property by category of protection, date of  
35 creation, owner of intellectual property, grantee, state agency or  
36 granting entity, sources of funding, and status of licensing,  
37 including invention utilization updates. Failure to include an item  
38 in the database does not create any presumption regarding  
39 ownership.

1 (c) Develop a sample maintenance plan of an inventory of  
2 intellectual property.

3 (d) Develop factors that state agencies should consider when  
4 deciding whether to sell their intellectual property or license it to  
5 others.

6 (e) Develop an outreach campaign informing state agencies of  
7 their rights and abilities concerning intellectual property created  
8 by their employees.

9 (f) Develop sample invention assignment agreements that state  
10 agencies can consider if they believe it is necessary to secure the  
11 rights to potentially patentable items created by their employees  
12 on worktime using state resources.

13 (g) Develop sample language for licenses or terms-of-use  
14 agreements that state agencies can use to limit the use of their  
15 intellectual property by others to only appropriate purposes.

16 13988.4. (a) Notwithstanding any other law, state agencies  
17 and departments may, upon request, share records and information  
18 related to intellectual property generated by state employees and  
19 state-funded research with the office.

20 (b) Any employee or former employee of the office who has  
21 access to or knowledge of the records and information described  
22 in subdivision (a), shall not divulge or make known to any person  
23 not employed by the office in any manner not expressly permitted  
24 by law any particulars of these records or information the public  
25 disclosure of which is restricted by law, or represents a first  
26 publication of research results, or information pertaining to patent  
27 rights that would not otherwise be publicly available.

28 13988.5. (a) This chapter shall not apply to intellectual  
29 property or intellectual property related agreements administered  
30 by the Regents of the University of California, and the  
31 subcontractors of the Regents of the University of California,  
32 except under a funding agreement from a state agency for the  
33 performance of research.

34 (b) This chapter shall not apply to intellectual property  
35 agreements governed by the California Stem Cell Research and  
36 Cures Bond Act (Chapter 3 (commencing with Section 125290.10)  
37 of Part 5 of Division 106 of the Health and Safety Code.